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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,288	01/14/2005	Stanislaw Flasiński	1189.0235. PCUS00	5604
45607	7590	09/14/2007		
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DRIVE SUITE 200 FALLS CHURCH, VA 22042			EXAMINER MEHTA, ASHWIN D	
			ART UNIT 1638	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/521,288

Applicant(s)

FLASINSKI, STANISLAW

Examiner

Ashwin Mehta

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1638

***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14, 16, and 23, drawn to a method, to reduce transgene silencing in transgenic plants; an artificial polynucleotide molecule selected from the group consisting of SEQ ID NOs: 3, 4, 6, 7, 10, 13, 14, 17, 18, 21, 22, and 35; a DNA construct comprising a promoter operably linked to said molecule; a plant cell or plant comprising said construct.

Group II, claim(s) 15, drawn to a method of detecting an artificial polynucleotide in a plant cell, comprising contacting a DNA sample from the cell with a DNA molecule that comprises at least one DNA molecule of a pair of DNA molecules that when used in a nucleic-acid amplification reaction produces an amplicon.

Group III, claim(s) 17-22, drawn to a DNA molecule selected from the group consisting of SEQ ID NO: 24, 25, 26, and 27; a plant cell or plant comprising said DNA molecule.

Group IV, claim(s) 25, drawn to a method of detecting the presence of an artificial polynucleotide encoding a glyphosate resistant EPSPS in a DNA sample, the method comprising extracting a DNA sample from a plant and contacting the sample with a labeled DNA molecule of sufficient length to be specifically homologous or complementary to an artificial polynucleotide selected from the group consisting of SEQ ID NOs: 3, 4, 6, 7, 10, 13, 14, 17, 18, 21, 22, and 35, subjecting the sample labeled DNA molecule to stringent hybridization conditions.

Group V, claim(s) 26 & 27, drawn to an isolated polynucleotide encoding an EPSPS enzyme comprising motif SEQ ID NO: 34, and a plant cell or plant comprising said EPSPS enzyme.

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the use of an artificial polynucleotide that is less than 85% identical to a known polynucleotide and does not share with it any lengths of more than 23 nucleotides having 100% identity, in a method to reduce transgene silencing in transgenic plants. This is not shared with Group II, which is drawn to a method comprising a nucleic acid amplification reaction to detect a polynucleotide in a plant cell; or with Groups III

Art Unit: 1638

and V, which are drawn to distinct DNA molecules; or with Group IV, which is drawn to a method of detecting the presence of a polynucleotide via hybridization.

Applicants are reminded that different nucleotide sequences and amino acid sequences are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute different inventive concepts. Absent evidence to the contrary, each such nucleotide sequence and each amino acid sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement.

If Group I or IV is elected, Applicants are also required to select one nucleotide sequence from SEQ ID NOs: 3, 4, 6, 7, 10, 13, 14, 17, 18, 21, 22, and 35. If Group III is elected, Applicants are required to select a) SEQ ID NOs: 24 and 25 or b) SEQ ID NOs: 26 and 27. This requirement is not to be construed as a requirement for an election of species, since each nucleotide sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the

Art Unit: 1638

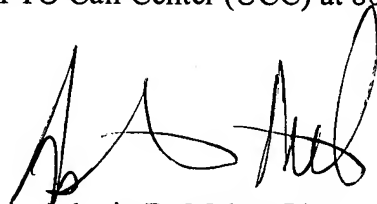
inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

### ***Contact Information***

Any inquiry concerning this or earlier communications from the Examiner should be directed to Ashwin Mehta, whose telephone number is 571-272-0803. The Examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at 571-272-0975. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

September 13, 2007



Ashwin D. Mehta, Ph.D.  
Primary Examiner  
Art Unit 1638